

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Amendment of Section 73.202(b),) RM _____
Table of Assignments)
FM Broadcast Stations)
Chatom, Alabama)

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MAY 26 1995

FEDERAL COMMUNICATIONS COMMISSION

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To: The Commission

PETITION FOR RECONSIDERATION

Creek Indian Enterprises, dba PCI Communications ("CIE"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby submits its Petition for Reconsideration of the Commission's action in declining to consider CIE's Petition for Rule Making in the above-referenced matter.

I. BACKGROUND

CIE is a tribally chartered corporation registered with the State of Alabama. The owners of CIE are all 2,023 members of the Poarch Band of Creek Indians, which is a federally recognized Indian tribe. CIE is the licensee of FM station WYDH, Atmore, Alabama, which operates on Channel 290A. The original application for the authorization for WYDH was filed in 1989 and specified a directional FM antenna in order to comply with the spacing requirements of Section 73.215 of the Commission's rules. The use of a directional antenna by WYDH protects the Chatom, Alabama allotment.

On March 14, 1995, the FCC opened a window inviting interested parties to file applications for the vacant allotment of Channel 291C3 at Chatom, Alabama by April 17, 1995.

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CIE timely filed a Petition for Rule Making requesting that the Commission modify the allotment of Channel 291C3 at Chatom, Alabama, to change the geographic coordinates and reflect a site restriction. The site restriction requested by CIE would provide that the transmitter be located at least 21.3 kilometers north-northeast of Chatom at coordinates N31 37 24 and W88 08 14. CIE included a Technical Statement with its Petition indicating that the site restriction would allow WYDH to increase its power in the direction of Chatom and improve its service to its community without violating the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's rules.

By a letter dated April 26, the Commission informed CIE that it would not consider CIE's Petition for Rule Making. CIE submits that its Petition for Rule Making was properly filed and entitled to consideration on its merits for the reasons discussed below.

II. DISCUSSION

When the Commission opened the window for the filing of applications for the new allotment at Chatom, CIE had only until the closing of that window, April 17, to file a competing petition for rule making.¹ Accordingly, if CIE had not proposed the modified allotment during the window, it would have lost its rights to propose the site restriction.

CIE's proposed the site restriction to allow it to operate WYDH in the direction of Chatom at full power as a 6000 watt Class A station. The original allotment of WYDH, initiated in the 1980's, was part of an ongoing effort to provide radio service to area residents and especially members of the Poarch Band of Creek Indians. CIE's recent Petition for Rule Making was an effort

¹ *In the Matter of Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, MM Docket No. 91-348, Report and Order, 7 FCC Rcd 4917 (1992).

to improve the service of that facility. WYDH currently protects the Chatom site; changing the reference coordinates at Chatom would not harm the Chatom allotment in any way, while it would allow WYDH to operate at 6000 watts, as reflected in the Technical Statement filed with the Petition for Rule Making.

Commission precedent supports the operation of Class A FM stations at 6000 watts. In 1989, the Commission amended its rules to raise the Class A power limit to 6000 watts. In the Second Report and Order adopting the new rules, the Commission stated its agreement with station licensees, managers, and engineers that the “3000 watt power level is inadequate . . . and that the proposed increase to 6000 watts would make a significant improvement in the ability of these [Class A FM] stations to serve the public.”² Allowing WYDH to operate at its full potential will further the Commission’s stated goal of providing “fair, efficient, and equitable distribution of radio service.”³

Moreover, there is nothing at all in CIE’s Petition for Rule Making that would render the Chatom allotment unusable. The Technical Statement filed with the Petition for Rule Making specifically addressed the available site areas. In short, there are plenty of transmitter sites available at Chatom and the proposed site restriction would not prevent the Chatom station from operating at its full power. Accordingly, the site restriction would allow both the Chatom facility and WYDH to operate with the maximum facilities permissible under the Commission’s rules and policies.

² *In the Matter of Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations*, MM Docket No. 88-375, Second Report and Order, 4 FCC Red 6375, 6380 (1989).

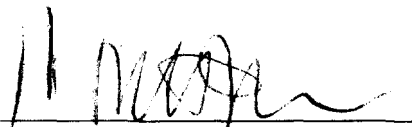
³ 47 C.F.R. § 307.

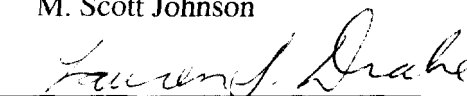
Clearly such a result is in the public interest as it would improve radio service to a larger segment of the public.

WHEREFORE, for the foregoing reasons, Creek Indian Enterprises dba PCI Communications respectfully requests that the Commission grant its Petition for Reconsideration and issue a Petition for Rule Making to modify the allotment of Channel 291C3 at Chatom, Alabama, to change the geographic coordinates and to reflect a site restriction.

Respectfully submitted,

**CREEK INDIAN ENTERPRISES
dba PCI COMMUNICATIONS**

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Dated: May 26, 1995

CERTIFICATE OF SERVICE

I, Christine Peyton, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 26th day of May, 1995, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing **Petition For Reconsideration** to the following:

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